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Ohio State Medical Association
Political Action Committee

The power of many The voice of one

Sent via Electronic Mail and Overnight Delivery

November 10, 2006

Lawrence H. Norton, Esq.
General Counsel
Federal Elections Commission
999 E. Street, NW
Washington, DC 20463
Attention: Elena Paoli, Esq., Staff Counsel

**RE: MUR 5812 (Supplemental Response)
Ohio State Medical Association Political Action Committee ("OSMAPAC")
and Tim Maglione, in his official capacity as Treasurer**

Dear Mr. Norton:

OSMAPAC is submitting this supplemental response regarding FEC MUR 5812. OSMAPAC previously communicated extensively with its Federal Election Commission ("FEC") analyst about the subject of this MUR and submitted a written response to the Commission dated October 16, 2006. OSMAPAC also made additional responses as requested in telephone interviews with Elena Paoli, Esq., FEC Staff Counsel. The subject of MUR 5812 relates to OSMAPAC's voluntary disclosure to the Federal Election Commission that it was the victim of an employee theft. As noted in OSMAPAC's written and oral responses, in addition to disclosing the material facts relating to the misappropriation, OSMAPAC also submitted documentation to the FEC of the receipt of funds incident to receipt of an insurance payment made regarding this covered loss.

Just a few days subsequent to OSMAPAC's October 16, 2006 submission, the Commission issued its "Proposed Embezzlement Policy" on October 20, 2006. Because

OSMAPAC Tim Maglione, Treasurer 3401 Mill Run Drive Hilliard OH 43026 (P) 614 527 OSMA 800 766 OSMA (F) 614 527 6763 www.osma.org

Contributions to OSMAPAC/AMPAC are not deductible as charitable contributions for federal income tax purposes. Voluntary political contributions by individuals to OSMAPAC/AMPAC should be written on PERSONAL checks. Funds from corporations will be used for political education activities where allowed. Contributions are not limited to suggested amounts. Neither the OSMA nor the AMA will favor or disadvantage anyone based upon the amounts of or failure to make PAC contributions. Voluntary political contributions are subject to limitations of FEC regulations Section 110.1, 110.2 and 110.5 (federal regulations require this notice).

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the Commission's proposed policy and the guidance contained in the policy are highly relevant to the subject matter of MUR 5812 as well as the corrective actions already taken by OSMAPAC, OSMAPAC found the issuance of the guidance a compelling reason to offer the following supplementary response.

**OCTOBER 16, 2006 WRITTEN RESPONSE, PRIOR COMMUNICATIONS
AND ADDITIONAL RESPONSES**

OSMA adopts and incorporates by reference its October 16, 2006 written response to the Commission, including the Statement of Facts as submitted and its subsequent oral responses and written responses to Elena Paoli, Esq. As of the date of this submission, OSMAPAC has not had the opportunity to read the FEC's revised Legal Analysis and Facts, if any, and therefore cannot offer any comment about the content and accuracy of these documents at this time.

FEC PROPOSED EMBEZZLEMENT POLICY

FEC's Proposed Embezzlement Policy illustrates that OSMAPAC is not alone in being victimized by a trusted individual who has stolen from political action committee funds. Perhaps the only solace that OSMAPAC can take from being a part of this unfortunate group is that OSMAPAC is ahead of the curve because it took the initiative to immediately institute corrective actions 1 and ½ years ago to adopt internal controls to avoid recurrence of any financial improprieties.

OSMAPAC is, at least, heartened by the fact that when it compared its policies and procedures, which have been in force and successfully implemented for almost 18

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months with the Commission's proposed policy we found that the OSMAPAC's current practices and procedures meet or exceed the key standards proposed by the Commission.

(See chart below.)

Comparison of Commission's Proposed Policy for Internal Controls and Post-Discovery of Misappropriation Activity With OSMAPAC's Procedures

Internal Controls

- ☒ All Bank accounts are opened in the name of the committee, never an individual.
- ☒ Checks in excess of \$1,000 and all wire transfers are authorized in writing by two individuals, who are identified in writing in the committee's internal policies.
- ☒ An individual who does not handle the committee's accounting or have banking authority receives incoming checks and monitors all other incoming receipts.
- ☒ This individual makes a list of all committee receipts and places a restrictive endorsement, such as "For Deposit Only" and the account number, on all checks.
- ☒ Bank statements are reconciled to the accounting records and list of receipts each month by someone other than a check signer or an individual handling the committee's accounting.

Not Applicable to OSMAPAC

- ☐ If the committee has a petty cash fund, an imprest system is used, with no more than \$200 outstanding at any given time.

Post-Discovery of Misappropriation Activity

As soon as a misappropriation is discovered, the political committee:

- ☒ Notifies relevant law enforcement of the misappropriation.
- ☒ Notifies the FEC of the misappropriation.
- ☒ Voluntarily files amended reports to correct any reporting errors due to the misappropriation, as required by the FEC.

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When OSMAPAC compared the Commission's recommendations for post- discovery corrective action after a misappropriation with the steps that OSMAPAC took immediately following the discovery of Jamee Patton's theft, we found that OSMAPAC had not only taken the steps recommended in the guidance, but had exceeded the Commission's requirements when it promptly notified all OSMAPAC contributors, sought to prosecute the crime to the fullest extent permitted by law, and promptly notified its insurance carrier. The significance of promptly notifying the insurance carrier is that the act of procuring adequate insurance in and of itself is consistent with the precautions that a prudent business person takes when operating any enterprise, i.e., maintaining insurance to protect against losses due to fraud and/or theft.

OSMAPAC also notes that the Commission's proposed policy differentiates between committees which are comparatively small operations such as OSMAPAC or even smaller operations without the extensive resources and of large, corporate or union committees. As documented in OSMAPAC's prior submissions, the OSMAPAC, on its own initiative enhanced its internal controls after discovery of the fraudulent scheme. These additional measures supplemented the basic checks and balances in place prior to the theft, including the use of analytical review techniques. [See Exhibit A, Protocols adopted July 15, 2005 and Exhibit B, Protocols as of October 25, 2006.] We urge the Commission to take into consideration that while the benefit of hindsight enabled OSMAPAC to enhance its internal controls so that they now meet or exceed the Commission's proposed standards, the procedures previously in place were reasonable in

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the context of the time. Though not perfect, as was subsequently revealed, PAC embezzlement is a recent phenomenon, as is demonstrated by the FEC's recent decision to provide recommended standards for the first time

Conclusion

We refer the Commission to OSMAPAC's October 16, 2006 submission and urge the Commissioners to read that document together with this supplemental response. OSMAPAC again acknowledges that when Ms. Patton executed her fraudulent scheme she caused the OSMAPAC to deviate unwittingly from its forty-year history of compliance with the regulatory requirements governing the Committee. We respectfully request that the Commission consider the totality of the circumstances when it acts on this matter. We further urge the Commissioners to weigh the many mitigating reasons which are in the record before the Commission, especially OSMAPAC's voluntary self-disclosure and cooperation with the Commission and its staff. In addition, we call the Commission's attention to the fact that no MUR nor audit had ever been initiated by the Commission involving OSMAPAC in its long history prior to this matter. In considering whether or not this matter merits further Commission proceedings, we note that the inaccurate reports caused by the embezzlement did no harm to the public. The public was not denied information about any candidate's financial position or contributors. No

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illegal contributions entered the system. No complaint relative to the subject matter of MUR 5812 has ever been filed by a member of the public with the Federal Election Commission, with state officials, or with OSMAPAC. We also direct the Commission's attention again to how severely OSMAPAC has already been effectively penalized. Not only were the funds stolen, but OSMAPAC has incurred additional costs to date of over \$100,000. This includes the cost of forensic accountants, special counsel for white collar crime, election and campaign law and insurance as well as hours upon hours of senior level staff time. Additionally immediately following the voluntary, public self-disclosure made by OSMAPAC, OSMAPAC suffered a decline of \$30,000 in contributions, which we attribute almost entirely to concerns among members over the embezzlement. Thus, the public has suffered no harm; OSMAPAC has been effectively penalized; and OSMAPAC has for nearly 18 months put into place safeguards – more extensive than those recently put forth by the Commission – to assure that it is not victimized again in the future. There is nothing to be gained in deterrence or punishment from further proceedings. In conclusion, on behalf of OSMAPAC and in my official capacity as Treasurer, I respectfully renew the request that the Federal Election Commission and the FEC Office of the General Counsel close this matter without further action. No purpose can be served in exacting further penalties against OSMAPAC in a matter in which no harm has been sustained by the public, no candidate campaign contributions were involved, where all receipts were properly reported and the fraudulent scheme was

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limited to misdirected disbursements. As representatives of the physicians, medical residents and students of Ohio, we believe that a decision not to take further action would be consistent with the intent of the Commission's regulatory goals and a fair and reasonable outcome.

If you have any questions regarding this letter, please contact Almeta E. Cooper, Esq. or me.

Sincerely,



Timothy I. Maglione, Esq.
OSMAPAC Treasurer

C: James Sudimack, MD, OSMA President
Steven Brezny, MD, Chair, OSMAPAC
D. Brent Mulgrew, OSMA Executive Director
Almeta E. Cooper, Esq., OSMA General Counsel

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OSMAPAC Financial Transaction Protocols

Contributions on the OSMA dues bill (note: this is the existing OSMA protocol)

- 1 All contributions on the dues bill are delivered to the OSMA lockbox operated by Bank One
2. Bank One copies the contribution information and forwards it to the OSMA for processing.
3. (Finance) FIN processes the lockbox information.
- 4 A summary of all contributions made on the OSMA dues bill will be detailed on the monthly activity report

Contributions by Check:

- 1 Mailroom logs all checks and delivers them to (FIN) to be separated into personal and corporate contributions
- 2 FIN processes all contributions
- 3 FIN deposits checks into the appropriate corporate or OSMAPAC account
- 4 FIN includes this information on the monthly activity report

Contributions by Credit Card:

1. Resource Center (RC) and Government Relations Group (GRG) are permitted to accept credit card information from contributors
- 2 GRG or RC completes the credit card PAC contribution form
3. GRG or RC deliver completed contribution forms to FIN
- 4 FIN processes the PAC credit card contribution forms in iMIS. Note: This is OSMA's existing procedure for all credit card transactions.
- 5 FIN includes this information on the monthly activity report.

Expenditures

- 1 GRG prepares check requests with support and proper approvals (See existing OSMAPAC contribution policy)
- 2 GRG e-mails the requests to FIN who will print the checks using appropriate accounting software (FIN will print checks weekly)
3. All checks require one live signature from Tim Maglione or Bill Byers. Two signatures will be required for all checks over \$1,000 Second signatures will be that of Kent Studebaker or Brent Mulgrew
- 4 Each expenditure will appear on the monthly activity report from FIN

Oversight

- 1 FIN reconciles the OSMAPAC checking and money market accounts monthly
2. FIN submits a monthly income and expenditure report to GRG, OSMA executive director, OSMA legal counsel and PAC Chair
- 3 FIN produces a detailed activity report for the OSMAPAC Board for each meeting.
- 4 OSMAPAC commissions an annual "agreed upon activities engagement" to perform selective tests of the accounting records to verify the overall accuracy of the financial reports.

Updated: July 13, 2005

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OSMAPAC Financial Controls

Updated: October 25, 2006

Contributions on the OSMA dues bill (note: this is the existing OSMA protocol)

1. All contributions on the dues bill are delivered to the OSMA lockbox operated by Chase Bank (formerly Bank One)
2. Chase copies the contribution information and forwards it to the OSMA for processing
3. Finance (FIN) processes the lockbox information.
4. All contributions made on the OSMA dues bill are entered into iMIS (the OSMA's accounts receivable and customer tracking software) Contribution information is then automatically uploaded into the FEC reports and the OSMA's accounting software

Contributions by Check:

1. Mailroom logs all checks and delivers them to the Government Relations Group (GRG) who then enters the contributions into iMIS GRG restrictively stamps each check "For Deposit Only".
2. GRG forwards the checks to FIN to be separated into personal and corporate contributions
3. FIN processes all contributions
4. FIN deposits checks into the appropriate corporate or OSMAPAC account.
5. FIN includes this information on the monthly activity report

Contributions by Credit Card:

1. Resource Center (RC) and Government Relations Group (GRG) are permitted to accept credit card information from contributors.
2. GRG or RC completes the credit card PAC contribution form
3. GRG or RC deliver completed contribution forms to FIN.
4. FIN processes the PAC credit card contribution forms in iMIS Note: This is OSMA's existing procedure for all credit card transactions.
5. FIN includes this information on the monthly activity report

Expenditures

1. GRG prepares check requests with support and proper approvals. (See existing OSMAPAC contribution policy)
2. GRG e-mails the requests to FIN who will print the checks using appropriate accounting software (FIN will print checks weekly.)
3. All checks require one live signature from the OSMAPAC Treasurer, Tim Maglione. Two signatures are required for all checks over \$1,000 Second signatures will be that of the OSMA's Senior Director, Kent Studebaker, or the Executive Director, Brent Mulgrew
4. Each expenditure is listed the monthly activity report from FIN.

Oversight

1. FIN reconciles the OSMAPAC checking and money market accounts monthly.
2. FIN submits a monthly income and expenditure report along with copies of the bank reconciliations to GRG and the Executive Director.
3. GRG uses the information prepared FIN to produce detailed activity reports for the OSMAPAC Board
4. OSMAPAC commissions an annual "agreed upon activities engagement" to perform selective tests of the accounting records to verify the overall accuracy of the financial information provided by FIN to the GRG and OSMAPAC Board.

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